

**Chapter 15.68**  
**Sustainable Building**

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**15.68.010 Purpose**

The purpose of this chapter is to assure that commercial and residential development is consistent with the City's Environmental Agenda and General Plan Conservation policies 7a and 7b to create a more sustainable community by incorporating sustainable building measures into the design, construction and maintenance of new and existing buildings. The sustainable building provisions referenced in this chapter are designed to achieve the following objectives:

- a. Increase energy efficiency in buildings
- b. Encourage water and resource conservation
- c. Reduce waste generated by construction projects
- d. Provide durable buildings that are efficient and economical to own and operate
- e. Promote healthy and productive indoor environments for residents, workers and visitors to the city
- f. Recognize and conserve the energy embodied in existing buildings.

**15.68.015 Definitions**

For the purposes of this chapter, the following terms, phrases, words and their derivations have the meaning given in this section:

- A. "Addition" means newly constructed square footage that is added to an existing structure.
- B. "Applicable Project" means any building permit application(s) for new commercial construction, additions or renovations; or for any new residential construction, additions or renovations subject to the Minimum Standards for Compliance as outlined in this Chapter.
- C. "Applicant" refers to any individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation or any other entity that applies to the City for building permits to undertake any construction or renovation project within the City.

- D. “Build It Green (BIG)” refers to the GreenPoint Rating System designed for residential developments by Build It Green.
- E. “City” means the City of Morgan Hill.
- F. “Commercial Project” means any project, other than a City sponsored project, that is not residential.
- G. “Conditioned Buildings” means conditioned space that is heated or cooled
- H. “Good Faith Effort to Comply” means a project that is subject to the requirements of this Chapter has not met the required sustainability standard, but for extenuating reasons or reasons beyond the control of the applicant, the Sustainable Building Compliance Official has found that the project meets the standards of Good Faith Effort to Comply pursuant to the Compliance Section outlined in this Chapter.
- I. “GreenPoint Rated” refers to the sustainable building rating system for residential development that was developed by the Build It Green organization.
- J. “GreenPoint Rated Verification” means verification of compliance of an applicable project by certified GreenPoint Raters, which can be qualified city staff or other qualified professionals retained by the City.
- K. “LEED<sup>®</sup>” means the “Leadership in Energy and Environmental Design” rating system developed by the U.S. Green Building Council.
- L. “LEED Accredited Professional (AP)” means an architect, designer, engineer, contractor and/or City staff that is certified through the U.S. Green Building Council to design, review plans, and inspect projects for compliance with the LEED rating system.
- M. “LEED AP Verification” means verification of compliance of an applicable project by City staff or other qualified professionals retained by the City with LEED AP certification and/or training.
- N. “LEED<sup>®</sup>/USGBC Verification” means verification by the LEED AP project architect and/or LEED AP and results in LEED certification of the project by the U.S. Green Building Council (USGBC.)
- O. “Mixed use” means a building that includes both commercial and residential uses within the same building envelope.
- P. “Multi-family residential” means a building envelope that contains five (5) or more attached dwelling units; or attached residential units that share electrical,

mechanical, and/or water service; or attached units that share enclosed common space, such as hallways for condominiums.

- Q. “New construction, commercial (nonresidential)” means the construction of new or replacement retail, office, industrial, warehouse, service, or similar building(s), or additions to such building(s).
- R. “New construction, residential” means the construction of a new or replacement single-family, including secondary dwelling units, or of new or replacement multi-family residential building(s) or additions to such building(s).
- S. “Non-conditioned Buildings” means space that is not heated or cooled.
- T. “Permit valuation” refers to the cost for construction of new buildings, additions and/or renovations as determined by the Building Official. Valuations are subject to change based on the annual Consumer Price Index (CPI) for new construction.
- U. “Qualified Sustainable Building Professional” means a person trained through the USGBC as a LEED accredited professional or through Build It Green as a certified GreenPoint rater, who can design, review plans, and inspect applicable projects for compliance with the sustainability standards outlined in the Minimum Standards for Compliance provisions of this Chapter.
- V. “Renovation” means any rehabilitation, repair, remodeling, change, or modification to an existing building, where changes to floor area and the footprint of the building are negligible. The permit valuation of renovation improvements shall be determined by the Building Official. The Sustainable Building Compliance Official may exclude from such valuation the cost of (a) seismic upgrades, (b) accessibility upgrades, or (c) photovoltaic panels or other renewable energy source. Renovation valuation thresholds identified in the Minimum Standards for Compliance shall be adjusted annually to reflect changes in the City’s valuation per square foot for new construction in Morgan Hill, using valuations based on the annual Consumer Price Index (CPI.)
- W. “Renewable energy” means derived from resources that are naturally regenerative or practically inexhaustible, such as geothermal, solar, thermal gradient and wind energy.
- X. “Scope of Work” means all construction work that is being undertaken for a project that requires building permits.
- Y. “Sustainable (green) building” means a whole systems approach to the design, construction and operation of buildings in a manner that substantially mitigates the environmental, economic, and social impacts of buildings. Sustainable building practices recognize the relationship between the natural and built environments and seek to minimize the use of energy, water and other natural resources and provide for a healthy, productive indoor environment.

- Z. “Sustainable Building Compliance Official (SBCO)” means the Building Official or his or her designee that is certified as a LEED AP and a GreenPoint rater or is experienced with sustainable building principles.
- AA. “Sustainable building project checklist” refers to the Build It Green or LEED® checklists used to calculate a sustainability rating for commercial and residential development.
- BB. “Sustainability Standard” means the minimum number of points or rating level that must be attained for a particular applicable project, as outlined in the Minimum Standards for Compliance of this Chapter.

#### **15.68.020                      Applicability**

This Chapter applies to any building permit application(s) for new commercial and mixed use construction, additions or renovations; or for any new residential construction, additions or renovations subject to the Minimum Standards for Compliance as outlined in Section 15.68.30 of this Chapter.

This Chapter shall not apply to any project for which a planning entitlement application has been granted (excluding sustainable checklists used at the time of Residential Development Control System allotment commitments); or a building permit application has been submitted prior to the effective date of this ordinance; or to permits that are solely for grading, retaining walls, or publicly owned utility structures such as wells and booster stations.

For additions, remodels or tenant improvements, the Sustainable Building Compliance Official may exclude the following from the valuation cost:

- seismic upgrades
- accessibility upgrades
- photovoltaic panels or other renewable energy source
- heritage buildings
- fire, flood, wind, earthquake, or other natural disaster damage repairs
- swimming pools
- temporary structures

Renovation valuation thresholds identified in the Minimum Standards for Compliance shall be adjusted annually to reflect changes in the City’s valuation per square foot for new construction in Morgan Hill, using valuations based on the annual Consumer Price Index (CPI.)

**15.68.30 Minimum Standard for Compliance**

All projects subject to this chapter shall be constructed using the current guidelines, sustainable building rating systems and sustainable project checklist outlined in Tables 1, 2 and 3 below upon applying for a building permit, unless another version of the checklist was previously approved by a planning entitlement (excluding checklist used at the time of Residential Development Control System allotment commitments.) Failure to comply with any of the terms of this Chapter shall subject the applicant of the applicable project to a full range of enforcement mechanisms set forth in Compliance Section 15.68.050 of this Chapter.

Compliance with the provisions of this chapter shall be listed as a condition of approval on any design review approval issued by the City for a project to require the project to meet the Minimum Standards for Compliance thresholds identified in this Section.

- A. New Residential Construction and Renovation: Residential development involving new construction shall use either the most current Build It Green (BIG) or LEED® for Homes rating system when applying for a building permit unless another version of the checklist was previously approved through a planning entitlement (excluding a checklist that was used at the time of Residential Development Control System allotment commitments) and shall meet the sustainability standard and verification method outlined in Table 1 below. Applicants are encouraged to certify their projects with Build It Green or the U.S. Green Building Council.

If a project consists of an addition and a remodel, the higher minimum standard shall apply. Projects must meet the minimum category points in Energy, Water, Resource and Indoor Air Quality within the BIG checklist or any other required points in the LEED or Build It Green's checklist. Community points from Build It Green's checklist are excluded from the minimum sustainability standard.

The Build It Green Multi-family checklist shall only be used when:

1. The attached units share mechanical or electrical features; or
2. Attached units share enclosed common space, such as hallways for condominiums; or
3. There are five (5) or more attached units or single-family dwelling units within the building envelope

**Table 1: Sustainable Residential Development Standards**

Applicable Project			
Residential, New Construction		Minimum Sustainability Standard	Verification
New Single Family or Multi-Family Developments	$\leq 2,000$ sf per unit	$> 2,000$ sf per unit	GreenPoint Rated Verification for BIG checklist or LEED <sup>®</sup> AP Verification for LEED <sup>®</sup> checklist
	70 BIG points* or LEED <sup>®</sup> Certified	70 BIG points + 1 point per additional 70 sf (150 point maximum)*  If using the LEED <sup>®</sup> rating system, must obtain LEED <sup>®</sup> Silver Certification	
Residential, New Construction Additions		Minimum Sustainability Standard	Verification Method
Addition $\geq 250$ square feet		25 points on BIG existing homes checklist*	GreenPoint Rated Verification
Addition $\geq 700$ square feet		50 points on BIG existing homes checklist*	GreenPoint Rated Verification
Renovations and Remodels			
Permit valuation** $\geq \$100,000$		25 points on BIG existing homes checklist*	GreenPoint Rated Verification
Permit valuation** $\geq \$250,000$		50 points on BIG existing homes checklist*	GreenPoint Rated Verification

\*Community points in Build It Green's checklist are excluded from the sustainability standard and the project is required to meet minimum point requirements within the checklist categories (energy, water, resource, and indoor air quality.)

\*\* Valuations are subject to change based on the annual Consumer Price Index (CPI) for new construction or other adopted valuation method adopted by the City of Morgan Hill.

- D. New Commercial Construction and Renovation: Commercial development involving new construction shall use the most current version of the LEED<sup>®</sup> rating system and meet the sustainability standard for applicable projects outlined in Table 2 below. If a project consists of a remodel and an addition, the project shall use the highest minimum standard that would apply to the applicable project. Applicants are encouraged to apply for LEED<sup>®</sup> certification through the U.S. Green Building Council.

**Table 2: Sustainable Commercial Development Standards**

Applicable Project Type	Sustainability Standard	Verification Method
Commercial, New Construction and Additions		
New/Additions Construction $\geq$ 1,000 square feet	16 LEED <sup>®</sup> Points	LEED <sup>®</sup> AP Verification
New/ Additions $\geq$ 5,000 square feet	LEED <sup>®</sup> Silver	
Commercial, Renovations/Tenant Improvements		
Small, renovations** $\geq$ \$350,000 permit valuation	10 LEED <sup>®</sup> Points	LEED <sup>®</sup> AP Verification
Medium, renovations** $\geq$ \$500,000 permit valuation	LEED <sup>®</sup> Certified (24 points)	
Large, renovations** $\geq$ \$1,500,000	LEED <sup>®</sup> Silver	

\*\* Valuations are subject to change based on the annual Consumer Price Index (CPI) for new construction or other adopted valuation method adopted by the City of Morgan Hill.

- E. New Mixed Use Construction and Renovation: Mixed use development involving new construction shall use the most current version of the LEED<sup>®</sup> or Build It Green rating system and meet the sustainability standard for applicable projects outlined in Table 3 below. If a project consists of a remodel and an addition, the project shall use the highest minimum standard that would apply to the applicable project. Applicants are encouraged to apply for LEED certification through the U.S. Green Building Council.

**Table 3: Mixed Use Development Thresholds and Standards**

<b>Applicable Project Type</b>	<b>Standard</b>	<b>Verification</b>
<b>Mixed Use, New Construction</b>		
New $\leq$ 10,000	<p>The project shall comply with residential minimum sustainability standards for the residential portion of the development; and</p> <p>For the commercial portion, the development shall be required to:</p> <ul style="list-style-type: none"> <li>○ Exceed California Title 24 energy requirements by 15%</li> <li>○ Provide a built-in recycling center in the kitchen facilities</li> <li>○ Use LEED® approved renewable or recycled carpeting and flooring</li> <li>○ Use LEED® approved low VOC adhesives, paints, flooring, and furnishings</li> </ul>	GreenPoint rated verification and/or LEED® AP Verification
New $\geq$ 10,000	Same standards apply as in Mixed Use New Construction $\leq$ 10,000. In addition, the development shall provide bicycle storage and a changing room facility that includes shower(s.)	
<b>Mixed Use, Additions and Remodels</b>	For additions and remodels, only that component of the project triggering compliance with the minimum standards for compliance in Tables 1 or 2 shall apply. If the project is a major renovation of both residential and commercial components, the applicant shall be allowed to use standards for New Mixed Use buildings.	

### 15.68.35 Incentives for Compliance for Renovations and Additions

- A. For commercial renovations and new additions: A LEED verification shall not be required for commercial renovation and addition projects defined in Table 2 of the Minimum Standards for Compliance that install a renewable energy system that supplies over 60% of the energy use for the building. The applicant shall provide the Building Division with documentation detailing the current and/or expected energy use of the building and the amount of energy the renewable energy system will provide before issuance of a building permit. A final sign off on the building permit shall not be provided until the renewable energy system has been installed. If the applicant fails to install the system, the applicant shall be subject to the full range of enforcement mechanisms set forth in this Chapter. Existing photovoltaic systems that provide 60% of the energy use for the building are not eligible to apply for this incentive.



B. For residential renovations and additions: A BIG verification shall not be required for residential renovation and addition projects defined in Table 1 of the Minimum Standards for Compliance that:

1. Install a renewable energy system that supplies over 60% of the energy use for the building. The applicant shall provide the Building Division with documentation detailing the current and/or expected energy use of the building and the amount of energy the renewable energy system will provide before issuance of a building permit. A final sign off on the building permit shall not be provided until the renewable energy system is installed. If the applicant fails to install the system, the applicant shall be subject to the full range of enforcement mechanisms set forth in this Chapter; or
2. Install a solar water heating system. The applicant shall provide the Building Division with documentation of the type and model of the current water heater and the amount of energy the solar water heater will provide before issuance of a building permit. Building inspection staff shall verify the existing water heater is not a solar water heater. A final sign off on the building permit shall not be provided until the renewable energy system is installed. If the applicant fails to install the system, the applicant shall be subject to the full range of enforcement mechanisms set forth in this Chapter.

#### **15.68.40      Submission of Documentation**

- A. Design Review Documentation: In conjunction with an application for a Design Review permit, the applicant shall submit a letter of acknowledgement indicating that the applicable project will achieve the sustainability standards defined in this Chapter. The letter shall also indicate how many points the applicable project will achieve in each category and/or level of LEED certification, and shall include the contact information of the potential qualified sustainable building professional that will ensure that the plans and construction activities meet the sustainability standards outlined in this Chapter.
- B. Building Permit Documentation: Upon submittal of an application for a building permit, any applicable project shall include the most current sustainable building project checklist unless another version of the checklist was previously approved by a planning entitlement (excluding sustainable checklists used at the time of Residential Control Development System allotment commitment.)

If the project requires plans, the sustainable project checklist shall be incorporated with the building plans on a separate plan sheet and shall indicate in the general notes or individual detail drawings the measures to be used to attain the sustainability standards defined in this Chapter, reflecting any changes proposed since the planning entitlement phase (if a planning entitlement was required.)

Applicants are encouraged to consult with a qualified sustainable building professional before submitting plans and/or applying for a building permit.

#### **15.68.45      Review of Documentation**

- A. Approval: Prior to the issuance of a building permit, the Building Division shall certify with an approval letter that the project meets the Minimum Standards for Compliance (or meets point level allowed under the Exceptions provisions of this Chapter) and that the plans (if submitted) reflect the points in the sustainable building project checklist. No building permit shall be issued until the permitting documentation has been approved under this section or unless an exemption has been granted under the Hardship and Infeasibility section of this Chapter.
  
- B. Non-approval: If the Building Division determines that the permitting documentation is incomplete or fails to indicate that the applicable project will meet the Minimum Standards of Compliance in this Chapter, the Building Division shall either:
  - 1. Return the permitting documentation to the applicant marked “Denied,” including a statement of reasons for the denial; or
  - 2. Return the permitting documentation to the applicant marked “Further Explanation Required” and detail the additional information needed.
  
- C. Resubmission: If the permitting documentation is returned to the applicant, the applicant may re-submit the permitting documentation with additional information as may be required or may apply for an exemption under Section Hardship and Infeasibility section of this Chapter.

#### **15.68.50      Compliance**

- A. Building Inspections, Verification and Occupancy: The Building Division inspection staff or other qualified professionals retained by the City shall verify that the sustainable building measures indicated in the approved permitting documentation are being implemented at the foundation inspection, framing inspection, or other as needed inspections, and prior to final inspection/issuance of a certificate of occupancy.

Throughout each inspection stage, the applicant shall be required to provide evidence of compliance to the Building Division to satisfy the requirements of the Minimum Standards for Compliance in this Chapter. This information shall include, but is not limited to:

1. Any documentation that would be required by the LEED or the GreenPoint rated system for certification. The applicant may be required to provide supporting information from qualified professionals (e.g. civil engineer, electrical engineer, Title 24 consultant, commissioning agent, etc.) to certify compliance with each point on the checklist.

Applicants with projects that are registered with the U.S. Green Building Council are encouraged to submit proof of registration and provide online access to the U.S. Green Building Council's website to the Building Division in order to easily monitor the documentation submittals by the applicant;

2. Documentation that verifies incorporation of the design and construction related credits specified in the project approval;
3. Any additional information that the applicant believes is relevant to determining that a good faith effort has been made to comply with this Chapter.

- B. Substitution of Credits: During the compliance review, flexibility may be exercised by the Sustainable Building Compliance Officer to substitute approved points with other points in the LEED® and GreenPoint rating systems. Substitution shall occur only at the request of the applicant and when it is determined that the originally approved credits are no longer feasible. Any substitution credits shall not result in reduced minimum category point requirements within a sustainable building project checklist or required points established in a development agreement.
- C. Non-Compliance: If, as a result of any inspection, the Building Division determines that the project does not or is unlikely to comply with the sustainability measures in the approved permitting documentation and/or plans, a stop-work order may be issued if the Sustainable Building Compliance Official determines that continuation of construction activities will jeopardize the project's ability to meet the required sustainability standard. The stop-work order shall remain in effect until the Sustainable Building Compliance Official determines that the project will be brought into compliance with the approved permitting documentation and this Chapter.
- D. Final Determination of Compliance: Prior to the scheduling of a final building inspection for an applicable project, the Building Division shall review all documentation submitted by the applicant and determine whether the applicant has achieved the Minimum Standards for Compliance set forth in this chapter; or demonstrates that measures are in place to assure compliance not later than one year after approval of the final building inspection; or the applicant has made a good faith effort, as defined below, to comply.

If the Building Division determines that the applicant has met the minimum requirements of this Chapter for the project, the final building inspection may proceed, provided the project has received approval of all other inspections required by the Building Official. If the Building Division determines that the required sustainability standard has not been achieved based on the provisions of this Chapter, the Sustainable Building Compliance Official shall find one of the following:

1. Good Faith Effort to Comply: An applicant must submit a written request to the Sustainable Building Official for approval of a Good Faith Effort to Comply. The granting or denial of the Good Faith Effort to Comply shall be provided to the applicant in writing within thirty (30) days of the applicant's written request by the Sustainable Building Official. If a Good Faith Effort to Comply is granted, the final building inspection may proceed.

Determination of a Good Faith Effort to Comply shall be made separately for each incomplete item on the sustainable building project checklist. Granting of a Good Faith Effort to Comply does not preclude the need for the applicant to comply with the other items on the sustainable building checklist, such as meeting minimum category point requirements within the checklist.

The Sustainable Building Compliance Official shall determine that the applicant has made a good faith effort to comply with this Chapter when finding that at least ninety percent (90%) of the required sustainability credits have been achieved and either:

- i. Measures are in place to assure full compliance not later than one year after approval of the final building inspection; or
- ii. The incomplete measures involve sustainable building materials and technologies that are no longer available or not yet commercially available, and the applicant will comply by incorporating other measures not later than one year after approval of the final building inspection; or
- iii. The cost for the incomplete sustainable building measure or documentation is disproportionate to the overall cost of the project, and the applicant will comply by incorporating other measures on the checklist not later than one year after approval of the final building inspection. That is, the cost for the sustainability measure or documentation exceeds three (3) percent of the total cost of construction. The Building Division shall verify the construction costs. The applicant shall be responsible for providing documentation, such as, but not limited to, invoices and estimates from at least three (3) separate sources, to support their positions.

The applicant shall submit evidence that the sustainability measure(s) will be in compliance not later than one year after approval of the final building inspection and shall submit a deposit/bond to the Building Division. The Sustainable Building Compliance Official will determine the amount of deposit/bond required based on the cost of the sustainability measure(s.)

The applicant shall be responsible for submitting documentation or contacting the Building Division for an inspection when the sustainable building measure(s) is in place within one year of the date of final inspection approval. If the applicant complies within the one year timeframe, the deposit/bond shall be released in full to the applicant. If the applicant fails to complete measures within the allotted timeframe, the deposit shall be used to enhance the City's sustainable building program.

2. Non-Compliant Project: If the Sustainable Building Compliance Official determines that the applicant has not made a good faith effort to comply with this chapter or if the applicant fails to submit the necessary documentation within the required time period for associated inspections and plan reviews, then the project shall be deemed non-compliant. The final inspection and approval for the project shall be withheld. A final inspection shall not take place until the applicant has implemented equivalent alternate measures approved by the Sustainable Building Compliance Official; or the applicant has been granted an exception under the provisions of this Chapter.
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- E. The Sustainable Building Compliance Official shall have the responsibility to administer and monitor compliance with the sustainable building requirements set forth in this chapter and to grant Good Faith Efforts to Comply, Exceptions and Exemptions from the requirements, where so authorized.
  - F. Compliance with the provisions of this chapter shall be listed as a condition of approval on any Design Review Permit or other discretionary permit approval, and on the building plans for building permit approval for any applicable project.

### **15.68.55        Exceptions**

If an applicant for believes circumstances exist that make it a hardship or infeasible to complete up to ten (10) percent of the required points defined in the Minimum Standards for Compliance Section of this Chapter, the Sustainable Building Compliance Official may authorize a maximum of ten (10) percent of the required points to be waived based on one of the following findings:

1. There is a lack of commercially available sustainable building materials and technologies to comply with the project's scope of work; or
2. The project's scope of work does not allow for enough sustainable checklist points without interfering with other areas outside the project's scope of work.
3. The cost to utilize sustainable building practices, technologies and/or provide documentation exceeds three (3) percent of the project's construction cost. The project's construction costs shall be verified by Building Division staff. The applicant may be required to provide evidence to the Building Division, such as but not limited to, invoices and estimates from three (3) different sources for each sustainable building measure(s) that the applicant believes is contributing to over 3% of the construction cost. The applicant is still required to obtain points that would equate up to 3% of the total construction costs.

The applicant must apply in writing to the Sustainable Building Official for an exception and shall indicate the circumstances that create a hardship or make it infeasible to fully comply with this Chapter. Determination of exception shall be made separately for each item on the sustainable building project checklist that the exemption applies to. Granting of an exception to comply for one or more items does not preclude the need for the applicant to meet required and minimum category point requirements within the checklist. As necessary, projects that are subject to development agreements shall apply for a development agreement amendment to modify the project's sustainability commitments.

The decision of the Sustainable Building Compliance Official shall be provided to the applicant in writing within thirty (30) days of applicant's written request. If an exception is granted, the applicant shall be required to comply with this chapter in all other respects.

If the Sustainable Building Compliance Official determines that it is reasonably possible for the applicant to fully meet the requirements of this chapter, the request shall be denied and the Sustainable Building Compliance Official shall notify the applicant in writing within thirty (30) days of the applicant's written request. The project and compliance documentation shall be modified to comply with this chapter prior to further review of any pending planning or building application.

#### **15.68.60      Hardship or Infeasibility Exemption**

At the time of applying for a building permit, an applicant believes that circumstances exist that make it a hardship or infeasible to meet the requirements of this Chapter, the applicant may request in writing to the Sustainable Building Official an exemption of one or more items on the sustainable building project checklist. The applicant shall indicate the maximum threshold of compliance that is feasible for the project; and circumstances that create a hardship or make it infeasible to fully comply with this Chapter. As

necessary, projects that are subject to a development agreement shall apply for an amendment to modify the project's sustainability standards. The Sustainable Building Official shall have the authority to grant or deny an exemption based on one of the following:

1. There are not enough sustainable building measures available within the sustainable building project checklist that are compatible with the project's scope of work; or
2. There is a lack of commercially available sustainable building materials and technologies to comply within the project's scope of work; or
3. The project is or within a non-conditioned building. Non-conditioned spaces that are attached to conditioned spaces are not eligible to apply under this finding; or

The decision of the Sustainable Building Compliance Official shall be provided to the applicant in writing within thirty (30) days of applicant's written request.

Granting of Exemption: If the Sustainable Building Compliance Official determines that it is a hardship or is infeasible for the applicant to fully meet the requirements of this chapter based on the information provided, the Sustainable Building Compliance Official shall determine the maximum feasible threshold of compliance reasonably achievable for the project. If an exemption is granted, the applicant shall be required to comply with this chapter in all other respects and shall be required to achieve the threshold of compliance determined to be achievable by the Sustainable Building Compliance Official.

Denial of Exemption: If the Sustainable Building Compliance Official determines that it is reasonably possible for the applicant to fully meet the requirements of this chapter, the request shall be denied. The project and compliance documentation shall be modified to comply with this chapter prior to further review of any pending planning or building application.

#### **15.68.070      Appeal**

- A. Any aggrieved applicant or person may appeal the determination of the Sustainable Building Compliance Official regarding: (1) the granting or denial of an exemption pursuant to the Hardship and Infeasibility section of this Chapter; or (2) the granting or denial of a Good Faith Effort to Comply pursuant to this Chapter; or (3) the granting or denial of Exceptions pursuant to this Chapter; or (4) compliance with any other provision of this ordinance.

Any appeal must be filed in writing with the Community Development Department not later than fourteen (14) days after the date of the determination by the Sustainable Building Compliance Official. The appeal shall state the alleged error or reason for the appeal.

The appeal shall be processed and considered by the Building Board of Appeals in accordance with Appendix B of the 2007 California Building Code.

- B. Any aggrieved applicant or person may appeal the determination of the Building Board of Appeals to the City Council. The appeal must be filed in writing with the City Clerk's Office within fourteen (14) days after the date of the determination by the Building Board of Appeals. The appeal shall be processed and considered by the City Council in accordance with the provisions of Chapter 18.64 of the Morgan Hill Municipal code.

#### **15.68.75      Violation**

Violation of any provision of this chapter due to the applicant's failure to plan or build the project in accordance with the terms of this Chapter shall be punishable as a misdemeanor defined in Chapter 15 Section 15.08.220 of the Morgan Hill Municipal Code.